Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF SECRETARY
Petition for Declaratory Ruling by) RM-8181	
the Inmate Calling Services)	DOCKET FILL SC C. WORKER
Providers Task Force)	

PETITION FOR WAIVER

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.3 of the Commission's Rules, hereby petitions for a Waiver of the Order in the captioned matter, released February 20, 1996, holding that the equipment used to deliver inmate-only payphone services is Customer Premises Equipment (CPE) and must be provided on an unbundled, unregulated basis; and directing carriers to amend their Cost Allocation Manuals to comply with this ruling, and to notify their customers of the change in status of inmate-only CPE.

Section 1.3 of the Commission's Rules allows the Commission to grant a Waiver "if good cause therefore is shown." Moreover, although the granting of a waiver is discretionary with the Commission, rules should be waived when particular facts make strict compliance inconsistent with the public interest.¹

Compliance with the Order of February 20, 1996, will not be in the public interest. The recently enacted Telecommunications Act of 1996,² at Section 276(b)(1),

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¹ Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Circuit 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Circuit 1969).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

requires the Federal Communications Commission to prescribe payphone regulations that, inter alia, (1) establish a per-call compensation plan, (2) discontinue the intrastate and interstate "carrier access charge payphone service elements," (3) prescribe non-structural safeguards, (4) provide for Bell Operating Company payphone providers the right to negotiate with location providers regarding the carrier of interLATA traffic, and (5) allow all payphone service providers to negotiate with location providers regarding carriers that transport intraLATA calls.

Subsection D of Section 276 of the Act specifically includes "the provision of inmate telephone service in correctional institutions" within the definition of the term "payphone."

Thus, the Act requires the FCC, as part of the comprehensive payphone rulemaking, to include regulations concerning inmate telephone service. Viewed in this light, the February 20, 1996, Order is at odds with the statutory scheme and constitutes a piecemeal approach to what is intended to be a unified regulatory structure.

Requiring SWBT to implement the terms of the February 20, 1996, Order before the Commission has released the rules and regulations required by The Telecommunications Act of 1996, will require SWBT to do on a piecemeal basis what the Act contemplates should be done as part of a unified process.

Once the Commission has considered the full record which will be created as part of the payphone rulemaking, new facts may come to light which will, in some significant

manner, change the conclusions adopted in the February 20, 1996, Order, which is based upon a small and dated record.³

The Order requires LECs to "establish whatever Part 64 cost pools are needed to accomplish this reclassification and ... file revisions to their Cost Allocation Manuals [CAMs] reflecting this reclassification within sixty (60) days prior to the effective date of the change [emphasis added]." In effect, the FCC is requiring that LECs file a revision to their CAMs on or about July 3, 1996, which is the date sixty days prior to the September 2, 1996, effective date of the reclassification required by the Order. Section 402 of the Telecommunications Act of 1996 states in part that the "Commission shall permit any common carrier ... to file cost allocations manuals ... annually, to the extent such carrier is required to file such manuals....[emphasis added]" Requiring LECs to file revisions to their CAMs more frequently than on an annual basis is contrary to the above-quoted provision of the new legislation. The February 20, 1996, Order must be revised accordingly to be consistent with the requirements of the legislation regarding annual CAM filings.

For the reasons discussed above, SWBT petitions the Commission to waive compliance with the terms of the February 20, 1996, Order until the Commission has released its rules and regulations growing out of the rulemaking proceeding on payphone issues, required by The Telecommunications Act of 1996.

³ Only 10 parties filed comments and only four filed replies in this matter. Moreover, the pleading cycle had been closed for three years prior to the entry of the Order.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By _

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March 21, 1996

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Petition for Waiver Of Southwestern Bell Telephone Company", have been served March 21, 1996 to the Parties of Record.

Kelly krickey

March 21, 1996

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